



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 418

[Docket No. SSA-2012-0011]

RIN 0960-AH47

Medicare Determinations and Income-Related Monthly Adjustment Amounts to Medicare Part B Premiums; Conforming Changes to Regulations

AGENCY: Social Security Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: We are modifying our regulations regarding Medicare Part B income-related monthly adjustment amounts (IRMAA) in order to conform to changes made to the Social Security Act (Act) by the Affordable Care Act. This rule freezes the modified adjusted gross income threshold and ranges from 2011 through 2019 and removes the requirement that beneficiaries consent to our release of Internal Revenue Service (IRS) information to the U.S. Department of Health and Human Services (HHS) for the purpose of adjudicating any appeal of an IRMAA to the Part B premium subsidy. We are also removing provisions that phased in IRMAA between 2007 and 2009 and updating a citation to reflect the transfer of authority for hearing appeals under Title XVIII of the Act from the Social Security Administration to HHS.

DATES: Effective Date: This interim final rule will be effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Date: To ensure that your comments are considered, we must receive them no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2012-0011 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2012-0011. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Craig Streett, Office of Income Security Programs, Social Security Administration, 2-R-24 Robert M. Ball Federal Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-9793. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

Medicare Part B is a voluntary medical insurance program that provides coverage for services such as physician's care, diagnostic services, and medical supplies. A beneficiary enrolled in Medicare Part B pays monthly premiums, deductibles, and co-insurance associated with covered services. The Centers for Medicare & Medicaid

Services (CMS) issues rules and regulations about the Medicare program, including the standard monthly premium. We determine and deduct the amount of certain Medicare Part B premiums from beneficiaries' Social Security benefits and make rules and regulations necessary to carry out these functions.

The Federal Government subsidizes the cost of Medicare Part B coverage. However, beneficiaries with modified adjusted gross incomes (MAGI) above a specified threshold must pay a higher percentage of the average cost of coverage than those with MAGI below the threshold.¹ We refer to this subsidy reduction as an IRMAA.

CMS determines and publishes the annual MAGI threshold and ranges. The IRS provides us with beneficiaries' MAGI information for the applicable tax year. We use this information to determine IRMAAs using the CMS-determined annual MAGI threshold.

In March 2010, Congress passed the Affordable Care Act.² The Affordable Care Act temporarily freezes the MAGI threshold above which beneficiaries must pay a higher percentage of the costs of their coverage. As a result, we are updating our regulations to reflect this change.

Section 3402 of the Affordable Care Act temporarily set aside the annual inflation adjustment used to set the MAGI threshold and ranges for purposes of determining IRMAAs. From January 1, 2011 through December 31, 2019, the dollar amounts used for

¹ MAGI is defined in 42 USC 1395r(i)(4). The threshold amount is defined in 42 USC 1395r(i)(2).

² P.L. 111-148.

2010 are the threshold and ranges used to determine if an IRMAA will apply. During this period, the threshold is \$170,000 for beneficiaries who file their Federal income taxes as married filing jointly and \$85,000 for beneficiaries who file their Federal income taxes with any other filing status.³ After 2019, these thresholds will resume adjustment for inflation as required by section 1839(i)(5) of the Act.

Regulatory Changes

We revised sections 418.1105, What is the threshold?, 418.1115, What are the modified adjusted gross income ranges?, and 418.1120, How do we determine your income-related monthly adjustment amount?, to reflect the new threshold and ranges established by the Affordable Care Act.

We removed section 418.1130 as well as language from sections 418.1001(b), 418.1101(c), 418.1125(b), and 418.1230(a) that described how we phased in the IRMAA. When Congress created the IRMAA, it provided for a gradual phase-in of the subsidy reduction. We completed the phase-in in 2009. Therefore, section 418.1130 and the phase-in language used in the revised sections are no longer necessary.

We deleted from section 418.1350 the requirement that an individual provide consent for us to release relevant tax return information to HHS' Office of Medicare Hearings and Appeals or Medicare Appeals Council for the purposes of adjudicating any

³ 74 FR 54571, 54573 (2009).

appeal of the amount of an IRMAA to the Part B premium subsidy. The Affordable Care Act removed this requirement by amending section 6103(l)(20) of the Internal Revenue Code to provide that we may disclose return information to officers and employees of the Department of HHS to the extent necessary to resolve administrative appeals of premium subsidy adjustments or increased premiums.⁴

We also updated 20 CFR 404.900(a) to correct an outdated citation to the HHS regulations. We replaced the reference to 42 CFR 405.701(c) with 42 CFR 405.904(a)(1). 42 CFR 405.904(a)(1) provides that we make initial determinations and reconsiderations of Medicare Part A and B applications and entitlement, and HHS handles Medicare appeals following a reconsideration .

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.⁵

⁴ P.L. 111- 148, sec. 3308(b)(2)(C)(iv).

⁵ 5 U.S.C. 553(b)(B).

We find that good cause exists for proceeding without prior public notice and comment with respect to the changes that freeze the MAGI threshold and ranges at 2010 levels from January 1, 2011 until December 31, 2019 and that remove the requirement that individuals consent to our release of relevant tax information to HHS for adjudication of IRMAA appeals. These changes are nondiscretionary under the Affordable Care Act. Accordingly, we find that prior public comment with respect to these changes is unnecessary.

We also find that good cause exists for proceeding without prior public notice and comment with respect to the changes that remove the outdated phase-in procedures from our rules. The language we are removing has no current effect and has not applied since we completed the IRMAA phase-in in 2009. Therefore, we find prior comment with respect to these changes is also unnecessary.

We also find that good cause exists for proceeding without prior public notice and comment with respect to the change to 20 CFR 404.900(a) because it is a technical change that only updates a citation to the HHS regulations. Therefore, we also find that prior public comment with respect to this change is unnecessary.

Additionally, we find that good cause exists for dispensing with the 30-day delay in the effective date of this rule. For the reasons we stated above, we find that it is unnecessary to delay the effective date of the changes we are making in this interim final rule. Accordingly, we are making this interim final rule effective [INSERT DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

Executive Order 12866

We consulted with the Office of Management and Budget (OMB) and determined that this interim rule meets the criteria for a significant regulatory action under Executive Order 12866. It was subject to OMB review.

Regulatory Flexibility Act

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act (PRA)

These rules do not impose any new public reporting burdens under the PRA or affect any existing OMB-approved PRA collections.

(Catalog of Federal Domestic Assistance Program Nos. 93.774 Medicare Supplementary Medical Insurance; 96.002 Social Security—Retirement Insurance.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Alimony, Blind, Disability benefits, Government employees, Income taxes, Insurance, Investigations, Old-age, Survivors and Disability Insurance, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social security, Travel and transportation expenses, Treaties, Veterans, Vocational rehabilitation.

20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: September 9, 2013

Carolyn W. Colvin
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR chapter III, part 404, subpart J and 20 CFR chapter III, part 418, subpart B as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY
INSURANCE (1950-)**

**Subpart J—Determinations, Administrative Review Process, and Reopening of
Determinations and Decisions**

1. The authority citation for subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)-(b), (d)-(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)-(b), (d)-(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97-455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)-(e), and 15, Pub. L. 98-460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend §404.900 by removing “42 CFR 405.701(c)” from paragraph (a) and adding in its place “42 CFR 405.904(a)(1).”

PART 418--MEDICARE SUBSIDIES

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

3. The authority citation for subpart B of part 418 continues to read as follows:

Authority: Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C.

902(a)(5) and 1395r(i)).

4. Amend §418.1001 by removing the last sentence of paragraph (b).

5. Amend §418.1101 by revising paragraph (c) to read as follows:

§ 418.1101 What is the income-related monthly adjustment amount?

* * * * *

(c) We will determine your income-related monthly adjustment amount using the method described in §418.1120.

6. Amend §418.1105 by revising paragraphs (b) and (c) to read as follows:

§ 418.1105 What is the threshold?

* * * * *

(b) From January 1, 2011 through December 31, 2019, the modified adjusted gross income threshold is \$170,000 for individuals with a Federal income tax filing status of married filing jointly. The threshold is \$85,000 for individuals with any other filing status.

(c) Starting on January 1, 2020, the threshold amounts will resume adjustment for inflation as required by section 1839(i)(5) of the Act. In each year thereafter, CMS will set all modified adjusted gross income threshold amounts for the following year by increasing the preceding year's threshold amounts by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000. CMS will publish the amounts in the Federal Register in September of each year. Published threshold amounts will be effective January 1 of the next calendar year, for the full calendar year.

7. Revise §418.1115 to read as follows:

§ 418.1115 What are the modified adjusted gross income ranges?

(a) We list the modified adjusted gross income ranges for the calendar years 2011 through and including 2019 for each Federal tax filing category in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment for these calendar years.

(b) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year

we use to make our income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$85,000 and less than or equal to \$107,000;
- (2) Greater than \$107,000 and less than or equal to \$160,000;
- (3) Greater than \$160,000 and less than or equal to \$214,000; and
- (4) Greater than \$214,000.

(c) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$170,000 and less than or equal to \$214,000;
- (2) Greater than \$214,000 and less than or equal to \$320,000;
- (3) Greater than \$320,000 and less than or equal to \$428,000; and
- (4) Greater than \$428,000.

(d) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for married individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$85,000 and less than or equal to \$129,000; and

(2) Greater than \$129,000.

(e) In 2019, CMS will set all modified adjusted gross income ranges for 2020 and publish them in the Federal Register. In each year thereafter, CMS will set all modified adjusted gross income ranges by increasing the preceding year's ranges by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000 and will publish the amounts for the following year in September of each year.

8. Revise §418.1120 to read as follows:

§418.1120 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount by using your tax filing status and modified adjusted gross income.

(b) Tables of applicable percentage. The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for calendar years 2011 through and including 2019 in the column on the left in each table. The middle column in each table shows the percentage of the unsubsidized Medicare Part B premium that will be paid by individuals with modified adjusted gross income that falls within each of the ranges. The column on the right in each table shows the percentage of the Medicare Part B premium that will be subsidized by contributions from the Federal Government. We use your tax filing status and your modified adjusted gross income for the tax year to determine which income-related monthly adjustment amount to apply to you. The dollar amount of income-related monthly adjustment for each range will be set annually for each year after 2019 as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually after 2019 as described in §418.1115(e).

(1) General table of applicable percentages. If, for the tax year, we use your filing status for your Federal income taxes for the tax year is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2011-	Beneficiary Percentage	Federal premium subsidy
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2019	(percent)	(percent)
More than \$85,000 but less than or equal to \$107,000	35	65
More than \$107,000 but less than or equal to \$160,000	50	50
More than \$160,000 but less than or equal to \$214,000	65	35
More than \$214,000	80	20

(2) Table of applicable percentages for joint returns. If, for the tax year, we use your Federal tax filing status is married filing jointly for the tax year and your modified adjusted gross income for that tax year is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2011-2019	Beneficiary Percentage (percent)	Federal premium subsidy (percent)
More than \$170,000 but less than or equal to \$214,000	35	65

More than \$214,000 but less than or equal to \$320,000	50	50
More than \$320,000 but less than or equal to \$428,000	65	35
More than \$428,000	80	20

(3) Table of applicable percentages for married individuals filing separate returns.

If, for the tax year, we use your Federal tax filing status is married filing separately, you lived with your spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2011-2019	Beneficiary Percentage (percent)	Federal premium subsidy (percent)
More than \$85,000 but less than or equal to \$129,000	65	35
More than \$129,000	80	20

(c) For each year after 2019, CMS will annually publish in the Federal Register the dollar amounts for the income-related monthly adjustment amount

described in paragraph (b) of this section.

§ 418.1125 [Amended]

9. Amend §418.1125 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

§ 418.1130 [Removed and reserved]

10. Remove and reserve §418.1130.

11. Amend §418.1230 to remove paragraph (a), redesignate paragraphs (b) through (d) as paragraphs (a) through (c), and revise new paragraph (a) to read as follows:

§ 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?

(a) Subject to paragraph (b) of this section, when your modified adjusted gross income for the more recent tax year is significantly reduced as a result of a major life-changing event, our initial determination is generally effective on January 1 of the year in which you make your request. If your first month of enrollment or reenrollment in

Medicare Part B is after January of the year for which you make your request, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

* * * * *

12. Revise §418.1350 to read as follows:

§ 418.1350 What are the rules for review of a reconsidered determination or an administrative law judge decision?

You may request a hearing before an OMHA administrative law judge consistent with HHS' regulations at 42 CFR part 405. You may seek further review of the administrative law judge's decision by requesting MAC review and judicial review in accordance with HHS' regulations.

[FR Doc. 2013-22445 Filed 09/17/2013 at 8:45 am; Publication Date:
09/18/2013]